

David J. McGlothlin, Esq. (SBN: 253265)
david@westcoastlitigation.com
Joshua B. Swigart, Esq. (SBN: 225557)
josh@westcoastlitigation.com
Hyde & Swigart
411 Camino Del Rio South, Suite 301
San Diego, CA 92108
(619) 233-7770
(619) 297-1022

Attorneys for Plaintiff
Stacey ortega

FILED

2011 MAY -6 P 1:49

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIFORNIA

Paul
NP
99

ADR

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Stacey ortega	C V Case No. 02235	HRL
Plaintiff,		
v.		
Griggs & Associates LLC and Jeanille Lanier Griggs		
Defendants.	Complaint For Damages Jury Trial Demanded	

INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

HYDE & SWIGART
Phoenix, Arizona

ORIGINAL

1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. Stacey ortega, (Plaintiff), through Plaintiff's attorneys, brings this action to
13 challenge the actions of Griggs & Associates LLC and Jeanille Lanier Griggs,
14 ("Defendants"), with regard to attempts by Defendants to unlawfully and
15 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
16 Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and
25 Defendants did not maintain procedures reasonably adapted to avoid any such
26 violation.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
9. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
10. Because Defendants do business within the State of California, personal jurisdiction is established.
11. Venue is proper pursuant to 28 U.S.C. § 1391.
12. At all times relevant, Defendants conducted business within the State of California.

PARTIES

13. Plaintiff is a natural person who resides in the City of San Jose, State of California.
14. Defendants are located in the City of Austell, in the State of Georgia.
15. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
16. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
17. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

1 18. Defendants, in the ordinary course of business, regularly, on behalf of
2 themselves, or others, engage in debt collection as that term is defined by
3 California Civil Code § 1788.2(b), are therefore debt collectors as that term is
4 defined by California Civil Code § 1788.2(c).

5 19. This case involves money, property or their equivalent, due or owing or
6 alleged to be due or owing from a natural person by reason of a consumer
7 credit transaction. As such, this action arises out of a consumer debt and
8 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

9 **FACTUAL ALLEGATIONS**

10 20. Sometime before April 11, 2011, Plaintiff is alleged to have incurred certain
11 financial obligations.

12 21. These financial obligations were primarily for personal, family or household
13 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
14 §1692a(5).

15 22. These alleged obligations were money, property, or their equivalent, which is
16 due or owing, or alleged to be due or owing, from a natural person to another
17 person and are therefore a “debt” as that term is defined by California Civil
18 Code §1788.2(d), and a “consumer debt” as that term is defined by California
19 Civil Code §1788.2(f).

20 23. Sometime thereafter, but before April 11, 2011, Plaintiff allegedly fell behind
21 in the payments allegedly owed on the alleged debt. Plaintiff currently takes
22 no position as to the validity of this alleged debt.

23 24. Subsequently, but before April 11, 2011, the alleged debt was assigned,
24 placed, or otherwise transferred, to Defendants for collection.

25 25. On or about April 11, 2011, Defendants telephoned Plaintiff and demanded
26 payment of the alleged debt.

- 1 26. This communication to Plaintiff was a “communication” as that term is
2 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
3 with 15 U.S.C. § 1692g(a).
- 4 27. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
5 defines that phrase, and an “initial communication” consistent with Cal. Civ.
6 Code § 1812.700(b).
- 7 28. During this April 11, 2011 Defendants’ agent indicated that there was a
8 criminal case against Plaintiff for failure to pay this alleged debt.
- 9 29. Through this conduct, Defendant engaged in conduct the natural consequence
10 of which was to harass, oppress, or abuse a person in connection with the
11 collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d.
- 12 30. Through this conduct, Defendant used a false, deceptive, or misleading
13 representation or means in connection with the collection of a debt.
14 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
15 1692e(10).
- 16 31. Through this conduct, Defendant made a false representation concerning the
17 character, amount, or legal status of a debt. Consequently, Defendant violated
18 15 U.S.C. § 1692e(2)(A).
- 19 32. Through this conduct, Defendant represented or implied that nonpayment of
20 any debt would result in the arrest or imprisonment of a person or the seizure,
21 garnishment, attachment, or sale of property or wages of a person when such
22 action was not lawful Defendant did not intended to take such action.
23 Consequently, Defendant violated 15 U.S.C. § 1692e(4).
- 24 33. Through this conduct, Defendant threatened to take action that cannot legally
25 be taken or that is not intended to be taken. Consequently, Defendant violated
26 15 U.S.C. § 1692e(5).
- 27 34. Because this violated certain portions of the federal Fair Debt Collection
28 Practices Act as these portions are incorporated by reference in the Rosenthal

1 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
2 this conduct or omission violated Cal. Civ. Code § 1788.17.

3 35. Defendants failed within five days after its initial communication with
4 Plaintiff, to provide written notification containing a statement that unless
5 Plaintiff, within thirty days after receipt of that notice, disputed the validity of
6 the debt, or any portion thereof, Defendants would assume the debt was valid,
7 or failed within five days after its initial communication with Plaintiff to
8 provide a written notice containing a statement that if Plaintiff notified
9 Defendants in writing, within the thirty-day period that the debt, or any
10 portion thereof, was disputed, Defendants would obtain verification of the
11 debt or a copy of a judgment against Plaintiff and a copy of such verification
12 or judgment would be mailed to Plaintiff by Defendants and that Defendants
13 would provide Plaintiff with the name and address of the original creditor.
14 This omission by Defendants violated 15 U.S.C. § 1692g.

15 36. Because this omission violated the language in 15 U.S.C. § 1692g,
16 Defendants also violated Cal. Civ. Code § 1788.17 as it incorporates 15
17 U.S.C. § 1692g.

18 37. On or about April 25, 2011, Defendants' agent again called Plaintiff.

19 38. During this call, Defendants' agent again threatened criminal prosecution, as
20 well as threatened to "intercept" Plaintiff's pay check, along with several
21 other threats and untrue statements.

22 39. Through this conduct, Defendant engaged in conduct the natural consequence
23 of which was to harass, oppress, or abuse a person in connection with the
24 collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d.

25 40. Through this conduct, Defendant used a false, deceptive, or misleading
26 representation or means in connection with the collection of a debt.
27 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
28 1692e(10).

- 1 41. Through this conduct, Defendant made a false representation concerning the
2 character, amount, or legal status of a debt. Consequently, Defendant violated
3 15 U.S.C. § 1692e(2)(A).
- 4 42. Through this conduct, Defendant represented or implied that nonpayment of
5 any debt would result in the arrest or imprisonment of a person or the seizure,
6 garnishment, attachment, or sale of property or wages of a person when such
7 action was not lawful Defendant did not intended to take such action.
8 Consequently, Defendant violated 15 U.S.C. § 1692e(4).
- 9 43. Through this conduct, Defendant threatened to take action that cannot legally
10 be taken or that is not intended to be taken. Consequently, Defendant violated
11 15 U.S.C. § 1692e(5).
- 12 44. Because this violated certain portions of the federal Fair Debt Collection
13 Practices Act as these portions are incorporated by reference in the Rosenthal
14 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
15 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 16 45. On or about April 26, 2011, Defendants' agent then called Plaintiff's place of
17 employment and spoke to Plaintiff's coworker, a third party, as that phrase is
18 anticipated by 15 U.S.C. § 1692c(b).
- 19 46. During this call, Defendants' agent stated that he was calling regarding a debt.
- 20 47. This communication to a third party was without prior consent, or the express
21 permission of a court of competent jurisdiction, or as reasonably necessary to
22 effectuate a post judgment judicial remedy, and was in connection with the
23 collection of the alleged debt, and with a person other than Plaintiff, Plaintiff's
24 attorney, a consumer reporting agency, the creditor, the attorney of the
25 creditor, or the attorney of the debt collector. This communication to this
26 third party was not provided for in 15 U.S.C. § 1692b. By making said
27 communication to a third party, Defendants violated 15 U.S.C. § 1692c(b).
28

- 1 48. Because this action violated the language in the language in 15 U.S.C. §
2 1692c(b), Defendants also violated Cal. Civ. Code § 1788.17 as it
3 incorporates 15 U.S.C. § 1692c(b).
- 4 49. During this conversation with Plaintiff's co-worker, Defendants' agent stated
5 he was with the "D.A.'s office" and that if Plaintiff did not return his call he
6 can "legally take action and have her arrested at her place of employment."
- 7 50. Through this conduct, Defendant engaged in conduct the natural consequence
8 of which was to harass, oppress, or abuse a person in connection with the
9 collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d.
- 10 51. Through this conduct, Defendant used a false, deceptive, or misleading
11 representation or means in connection with the collection of a debt.
12 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
13 1692e(10).
- 14 52. Through this conduct, Defendant used a false representation or implication
15 that the debt collector is vouched for, bonded by, or affiliated with the United
16 States or any State, including the use of any badge, uniform, or facsimile
17 thereof. Consequently, Defendant violated 15 U.S.C. § 1692e(1).
- 18 53. Through this conduct, Defendant made a false representation concerning the
19 character, amount, or legal status of a debt. Consequently, Defendant violated
20 15 U.S.C. § 1692e(2)(A).
- 21 54. Through this conduct, Defendant represented or implied that nonpayment of
22 any debt would result in the arrest or imprisonment of a person or the seizure,
23 garnishment, attachment, or sale of property or wages of a person when such
24 action was not lawful Defendant did not intended to take such action.
25 Consequently, Defendant violated 15 U.S.C. § 1692e(4).
- 26 55. Through this conduct, Defendant threatened to take action that cannot legally
27 be taken or that is not intended to be taken. Consequently, Defendant violated
28 15 U.S.C. § 1692e(5).

- 1 56. Through this conduct, Defendant used a false representation or implication
2 that a consumer committed a crime or used other conduct in order to disgrace
3 the consumer. Consequently, Defendant violated 15 U.S.C. § 1692e(7).
- 4 57. Because this violated certain portions of the federal Fair Debt Collection
5 Practices Act as these portions are incorporated by reference in the Rosenthal
6 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
7 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 8 58. Plaintiff is informed and believes and thereon alleges that Defendant Griggs
9 & Associates, LLC and Defendants' agents that contacted Plaintiff were
10 acting as an agent of Defendant Jeanille Lanier Griggs; Therefore, Defendant
11 Jeanille Lanier Griggs can be held responsible and is vicariously liable for the
12 conduct of Defendant Griggs & Associates, LLC and Defendants' agents that
13 contacted Plaintiff, and vice versa, and Plaintiff incorporates all theories of
14 vicarious liability within this Complaint, including, but not limited to,
15 respondeat superior.
- 16 59. Plaintiff is informed and believes that Defendant Jeanille Lanier Griggs had a
17 duty to properly supervise the employees of Defendant Griggs & Associates,
18 LLC to ensure her agents/employees did not illegally and abusively collect
19 debts from consumers or Plaintiff.
- 20 60. Plaintiff is informed and believes that Defendant Jeanille Lanier Griggs was
21 negligent in her supervising, and breached her duty to properly supervise her
22 employees/agents to prevent illegal and abusive debt collection.

23 **CAUSES OF ACTION**

24 **COUNT I**

25 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

26 **15 U.S.C. §§ 1692 ET SEQ.**

- 27 61. Plaintiff repeats, re-alleges, and incorporates by reference, all other
28 paragraphs.

62. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

63. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

64. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

65. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32.

66. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

COUNT III

NEGLIGENT SUPERVISION

AS TO DEFENDANT JEANILLE LANIER GRIGGS

67. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

68. Defendant was negligent in their actions regarding supervising her employees and agents as they collected alleged debts.

69. Plaintiffs were harmed, and suffered injury as described above.

70. Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

71. Defendant had a duty to ensure that her employees did not illegally and abusively collect debts.

72. Defendant was negligent for one of the following errors or omissions: Failure to use reasonable care in supervising her employees/agents debt collection activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c);
- Special, general, and compensatory damages and punitive damages to be determined at trial; and
- For such other and further relief as may be just and proper.

73. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: 5/3/11

By: David J. McGlothlin
Attorneys for Plaintiff

HYDE & SWIGART
Phoenix, Arizona